(1) (3)

IN THE HON'BLE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 239 /04

Deuram S/o- Mohni Gond,
Aged about 40 years,
Village-Dongari Para, Kanharpuri,
Tehsil-Kanker, Distt. Kanker, (CG)------ **APPELLANT/PLAINTIFF**

VERSUS

P. R. No. 478/04
Presented by Shri Pankaj Shrivastava
dated 31.03.04

1. Deoki Bai W/o-Durjan Singh Gond,
Aged about-32 Years,
Village-Dongaripara, Kanharpuri,
Tahsil-Kanker, Distt. Kanker, CG

2. State of C.G.
Through-Collector, Kanker,
Distt-Kanker, (CG.) --------- **RESPONDENTS/DEFENDENTS**

SECOND APPEAL U/S 100 OF THE CODE OF CIVIL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर (43)

आदेश पत्रक

मामला क्रमांक S.A. No. 239/2004 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	03/08/2005 Shri Bhaskar Payasi, Counsel for the appellant. Shri R.N. Jha, Counsel for the respondent No.1. None for respondent No.2. Heard on admission as well as on M.C.P.No.101/2005. Appellant/plaintiff filed a suit for declaring sale deed dated 03/05/1985 executed in favour of respondent No.1 as void and for grant of permanent injunction. Learned trial Court, after evaluating the evidence held that the suit land is ancestral property of Mohni Gond, Mohni Gond after receiving consideration has sold nine acres of land in favour of respondent No.1 by a registered sale deed dated 03/05/1985 and therefore, dismissed the suit. Being aggrieved by the said judgment and decree appellant/plaintiff preferred appeal that was registered as Civil Appeal No. 43-A/99. Learned First Additional District Judge, Kanker vide judgment and decree dated 26/12/2003 affirmed all the findings of the trial Court and dismissed the appeal. Appellant in memo of appeal stated that the following are the substantial questions of law, to be considered in second appeal.	

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(44)

आदेश पत्रक

मामला क्रमांक ..... **सन् 200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"1) Whether due execution, attestation and validity of the deed of sale, dated 03/05/1985 (ExP/1) could be upheld even in absence of the original sale deed?

2) Whether the lower Appellate Court erred in holding at para 10 of its judgment that the due execution of the alleged sale (Ex.P/1) was never questioned by the plaintiff?

3) Whether in absence of partition, the Defendant No.1 Deoki Bai could enter into possession of the suit land which has been held as ancestral property of the father of the appellant?"

Appellant/plaintiff has averred that the land was recorded in the name of Mohni Ram and total land comprises of 18.44 acres. Plaintiff and respondent No.1 are son and daughter of Mohni Gond though they are related by half blood. Plaintiff himself has pleaded that on 03/05/1985 Mohni Gond sold nine acres of land by a registered sale deed in favour of respondent No.1. He challenged the sale deed on the ground of fraud, but both the Courts below did not hold the sale deed to be a result of fraud and hence have held that the sale deed executed in favour of respondent No.1 is valid.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर (45)

आदेश पत्रक

मामला क्रमांक ..... सन् **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

According to law relating to transfer of property and registration of sale deed, when plaintiff himself is averring that it has been executed by the person in whose name lands are there it is not necessary that original sale deed should be produced. Here it is not out of place to mention that in judgment passed by First Additional District Judge, Kanker at paras 9, 10 and 12 has considered the question regarding execution of the said sale deed and found that the original sale deed has been duly produced in the trial Court and the trial Court received the same in pursuant to order dated 23/01/1998. When plaintiff himself has made averment that Mohni Gond transferred nine acres of land by a registered sale deed in favour of respondent No.1, it means plaintiff admits the execution of the sale deed challenging its execution invalid for want of consideration. Both the Courts below after evaluating the evidence have held that the sale deed was executed for due consideration, and sale is valid. The case of the plaintiff is only for declaration of title and declaration of sale deed to be void. Dispute regarding possession is not a question of law, but question of fact.

Taking into consideration the findings arrived at by both the Courts below as well as the pleading of plaintiff/appellant himself the suit was completely based on facts and both the Courts below decided the question raised by both the parties and held disentitle the plaintiff for relief, which he has sought, I am of the opinion

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that this appeal does not involve any substantial question of law; therefore, the appeal is liable to be dismissed and is accordingly dismissed. Consequently, M.C.P.No.101/2005 and I.A.No.1736/2005 stand disposed of. **Sd/-** **V.K.Shrivastava** **Judge**	

raju

(पीछे देखिये)